

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

11/2/04
29593

FILE: B-216591

DATE: October 18, 1984

MATTER OF: EPD Enterprises, Inc.

DIGEST:

1. Submission of a below-cost bid is not illegal and provides no basis for challenging the award of a government contract to a responsible bidder.
2. GAO does not review protests challenging affirmative responsibility determinations except in limited circumstances.

EPD Enterprises, Inc. protests the possible award of a contract to Southland Waste Systems and Lester Phillips, Incorporated under invitation for bids (IFB) No. N62467-84-B-2369, issued by the Department of the Navy for waste disposal services. EPD contends that these firms' bids are too low to include all of the work described in the solicitation and thus should be rejected.

The submission of a below-cost bid is not illegal and provides no basis for challenging the award of a government contract to a responsible prospective contractor. TECOM Inc., B-215291, June 19, 1984, 84-1 CPD ¶ 644. In order to award a contract to either of the firms mentioned by the protester the agency must determine that the firm selected for award is responsible. See Environmental Container Systems, Inc., B-201739, Feb. 9, 1981, 81-1 CPD ¶ 83. Although it is unclear whether such a determination yet has been made here, our Office does not review protests concerning such affirmative determinations of responsibility absent a showing that the contracting officer may have acted fraudulently or in bad faith, or that definitive responsibility criteria in the solicitation may not have been met. Sun Temporary Services, B-210557, Feb. 17, 1983, 83-1 CPD ¶ 167. Neither exception applies here.

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The protest is dismissed.

Harry R. Van Cleve
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General Counsel